

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 597 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI

Versus

POLICE COMMISSIONER SURAT

Appearance:

MR BC DAVE for SUNIL C PATEL for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/08/1999

ORAL JUDGEMENT

Heard the learned advocates appearing for the respective parties.

The petitioner challenges the order of preventive detention dated 15th December, 1998, made by the Commissioner of Police, Surat City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are found to be prejudicial to the maintenance of public order. Four offences punishable under Chapter-XVI of the IPC are registered against the petitioner. Two individuals have, on 20th November, 1998 and 21st November, 1998, given statements in respect of the nefarious activities of the petitioner which are prejudicial to the maintenance of public order.

The order of detention is challenged on the grounds (a) the impugned order of detention has been made long after the registration of offences against the petitioner and even after his release on bail; (b) neither of the witnesses had refused to disclose their identity in public and the privilege claimed in respect of the names and other particulars of the said witnesses under the powers conferred under section 9 (2) of the Act is unjustifiable; (c) even if the said privilege had been rightly exercised, such names and other particulars ought to have been disclosed to the Government as and when the report is made to the Government; (d) the subjective satisfaction recorded by the Detaining Authority is vitiated on account of non application of mind in as much as the Detaining Authority has referred to the recovery of a knife though no knife was ever recovered from the petitioner; (e) in any view of the matter, the conduct of the petitioner may be prejudicial to the maintenance of law and order, but, the same can not be said to be prejudicial to the maintenance of public order. In support of his contentions, Mr. Dave has relied upon the decisions of the Supreme Court in the matters of GULAB MEHRA VS STATE OF UP & ORS (AIR 1987 SC 2332); SMT. BIMLA DEWAN VS THE LIEUTENANT GOVERNOR OF DELHI (AIR 1982, SC 1257), and of this court in the matter of BAI AMINA W/O IBRAHIM ABDUL RAHIM ALLA VS STATE OF GUJARAT & ORS (22 GLR, 1126).

The petition is contested by the learned AGP Ms. Punani. She has submitted that the incidents referred to by the two witnesses do amount to breach of public order. She has therefor relied upon the judgment of the Supreme Court in the matter of AMANULLA KHAN KUDEATALLA KHAN PATHAN VS STATE OF GUJARAT & ORS. (JT 1999 (4) SCC, 455).

As many as four offences punishable under

Chapter-XVI of the IPC have been registered against the petitioner. In respect of the last of the said offences, the petitioner was arrested on 7th November, 1998 and was released on bail on the same day. The incident referred to by the witnesses in their statements given on 20th November 1998 and 21st November, 1998, have occurred after the petitioner was released on bail. The said statements were verified by the Detaining Authority personally on 14th December, 1998. The impugned order made on 15th December, 1998, therefore, can not be said to be delayed. Even if there is any delay in making the order, the same has not snapped the link with the cause of action which should vitiate the order. Upon perusal of the statements given by the witnesses before the Police Officer who recorded the same, and before the Detaining Authority, it is apparent that neither of the witnesses was prepared to give statement against the petitioner unless he was first assured of anonymity. The Detaining Authority had offered police protection to the said witnesses. In spite of the said offer, the witnesses did not agree to depose against the petitioner in public. This establishes that the witnesses had a fear of retaliation by the petitioner. Under the circumstances, the privilege claimed under section 9 (2) of the Act can not be said to be unjustifiable. Besides, in the grounds of detention also, the Detaining Authority has recorded his subjective satisfaction in respect of the privilege claimed under section 9 (2) of the Act. In view of these facts, the observations made by this court in the matter of Bai Amina (supra), shall lend no support. Further, on perusal of the statements given by the witnesses, it is clear that only those of the details which disclose the names or other particulars of the witnesses have been withheld. The blank left in the statement of the witness No.2 also relates to the place of business of the said witness. If such details were disclosed to the petitioner, the petitioner would have immediately known the identity of the witnesses and the purpose of claiming the privilege under section 9 (2) of the Act would be frustrated. The allegation of non-application of mind by the Detaining Authority also requires to be rejected. The Detaining Authority has while recording his subjective satisfaction relied upon the papers of the criminal cases pending against the petitioner. The Detaining Authority has particularly relied upon the offence registered as CR No. 78/98 against the petitioner and three others. Mr.Dave has contended that while discussing the facts of the said offence, the Detaining Authority has referred to the petitioner as having entered the house of the complainant with knife, though, the petitioner had no knife. Moreover, even the investigation papers do

disclose that the knives were possessed by other accuseds and not by the petitioner. This clearly indicates non-application of mind on the part of the Detaining Authority. I am unable to agree with this contention either. Upon perusal of the investigation papers, I find that four persons including the petitioner are alleged to have entered the house of the complainant, two of them i.e. one Dahyabhai Virjibhai and Pravinbhai Virjibhai are alleged to have possessed a knife and both of them are alleged to have stabbed the victim. Two knives were recovered from the possession of the said two persons. The petitioner and one another are alleged to have instigated the other two accused with knives to kill the victim. The reference in the grounds of detention is clearly to the incident in question. There is no discussion in respect of the individual involvement either by the petitioner or by the other accused persons. What is narrated is that the petitioner had entered the house of the complainant in the company of Pravinbhai Virjibhai, Maheshbhai Vanjara, Kalabhai Virjibhai and Dahyabhai Virjibhai with knife. The said reference is nothing but the gist of the complaint lodged against the accused persons and it can not be said that the Detaining Authority was not aware that the knives were recovered from other accused persons and not from the petitioner. The contention is, therefore, rejected. It is also contended that the names of the associates of the petitioner are not disclosed in the grounds of detention. I believe the same is not necessary. Besides, the names of his associates/accomplices are disclosed in the concerned FIR. The question that now remains to be answered whether the activities of the petitioner can be said to be prejudicial to the maintenance of public order or not. Mr. Dave has vehemently argued that all the offences alleged to have been committed by the petitioner are directed against the particular individual and even the incident narrated by the witnesses are directed against the particular individual and the same shall not have an effect of affecting the public tranquility or the even tempo of life. The said activities, therefore, can not be said to be detrimental to the maintenance of public order. The judgments in the matter of Gulab Mehra (supra) and Bimla Dewan (supra), were delivered under National Security Act. In the matter of Gulab Mehra (supra), on fact, the court found that the Detaining Authority had not recorded his subjective satisfaction in respect of the detenu's activities being prejudicial to the maintenance of public order. The court held that -

" Thus from these observations it is evident that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to

the society. If the act is restricted to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and/or the even tempo of the community, then it becomes a breach of the public order" In the matter of Bimla Dewean (supra), the court found that the detenu was detained under the NASA for as many as 32 incidents. Having examined each of the said incidents, the court found that none of them could amount to any interference with the maintenance of public order and could not constitute ground for detention. The court, therefore, observed that "We are, therefore, unable to hold that this instance has any potentiality to interfere with and has effect upon the public tranquility and order and that it can not constitute a ground for detention under the National Security Act, 1980 " The law is well settled that each matter is required to be examined on its facts and whether the incidents relied upon can have an effect upon the public tranquility and the public order. In the matter of Amanulla Khan (supra), the Supreme Court has held that " we find that the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and therefore such activities can not be said to be a mere disturbance of law and order.." In the present case also, the incidents narrated by the witnesses do disclose that the incident in question occurred during the broad-day light in a populated area. The petitioner had took out a knife and had demanded money from the witness. The witnesses were beaten. Both the witnesses had to give extortion money to the petitioner under the fear of death. In both the incidents, the people had gathered and were terrorized at the knife-point and were threatened. The petitioner is alleged to have exhorted the witness to kill him in case he lodged a police complaint. Such an incident occurring in the populated area in presence of several persons should certainly have an adverse effect on even tempo of life and, therefore, such activities can not be said to be a mere disturbance of law and order. The activities of the petitioner do amount to disturbance of public order and to prevent such disturbance, the detention was warranted.

For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged.

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JOSHI*